

SACHS WALDMAN
PROFESSIONAL CORPORATION
www.sachswaldman.com
ATTORNEYS AND COUNSELLORS AT LAW
1000 Bankers
Detroit, Michigan 48226-3099

(313) 965-3464

Writer's Direct Dial: (313) 496-9429
Facsimile Number: (313) 965-3464
E-Mail: info@sachswaldman.com

March 26, 2009

DANIEL H. WALDMAN
MICHAEL J. WALDMAN
JOHN A. HENNING
T. BRUCE STEINBOCK
CHRISTOPHER M. JAMES
JAMES BLAIR STEINBOCK
GEORGE E. HENNINGSEN
GEORGE E. STEINBOCK
JOHN A. HENNING, JR.
ANDREW STEINBOCK

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ADAM E. ARNOLD
JAMES A. HENNING
AND BACHMAN

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WASHINGTON, DC 20543

202 452-2527
202 452-2528
TOLL FREE 1-800-452-2527

THOMAS J. SACHS
DIRECTOR

ROBERT A. HEDGECOCK
MICHAEL A. WILSON
JAMES M. MCHENNA
T. BRUCE STEINBOCK
COLLEEN R. O'NEILL
OF COUNSEL

Office of the General Counsel
Federal Election Commission
990 E St. NW
Washington DC 20463

re: **MUR 6170**

Dear Sirs:

I am writing on behalf of the Tuscola County Democratic Committee ("the Committee") in response to the Complaint filed in the above matter. I have previously filed a Statement of Designation of Counsel. The Committee was granted a thirty day extension, until March 31, 2009, for its response.

As explained below, the Committee did not meet the minimum contribution and expenditure thresholds for registration as a federal committee, and accordingly it did not violate the FECA by not registering as a federal committee. The contributions and expenditures described in the Complaint were made with federally permissible funds. The Committee did inadvertently neglect to file independent expenditure reports on the small amounts it expended in support of candidates for federal office.

Contribution and Expenditure Thresholds

The Committee understands that it is a "local committee of a political party" as defined in the FEC's regulations. The Committee did not make sufficient contributions or expenditures to require registration as a federal committee, as alleged in the Complaint. The complainant mistakenly aggregates the Committee's federal contributions and expenditures. The Complaint quotes the *Campaign Guide for Political Party Committees* (Aug. 2007) as stating that a local party organization becomes a political committee when, during a calendar year, it "spends more than \$1,000 in contributions and other expenditures." However, the FECA and the Commission's regulations clearly state that the \$1,000 threshold is applied separately for contributions and expenditures rather than in the aggregate for both. FECA Sec. 301(4), 2 USC § 431(4)(C), defines a "political committee" subject to registration requirements under 2 USC § 433(a), as:

any local committee of a political party which receives contributions aggregating in



excess of \$5,000 during a calendar year; it makes payments exempted from the definition of contribution or expenditure as defined in paragraphs (8) and (9) aggregating in excess of \$5,000 during a calendar year, or makes contributions aggregating in excess of \$1,000 during a calendar year or makes expenditures aggregating in excess of \$1,000 during a calendar year.

The FBC regulation, 2 CFR 100.5(e), similarly states in pertinent part:

Political committee means any group meeting one of the following conditions: . . .

(c) Any local committee of a political party is a political committee if: it receives contributions aggregating in excess of \$5,000 during a calendar year; it makes payments exempted from the definition of contribution, under 11CFR 100.80, 100.87, and 100.89 and expenditure, under 11 CFR 100.140, 100.147, and 100.149, which payments aggregate in excess of \$5,000 during a calendar year; or it makes contributions aggregating in excess of \$1,000 or makes expenditures aggregating in excess of \$1,000 during a calendar year.

The statute and the regulation unambiguously state the \$1,000 federal committee registration threshold in the disjunctive, i.e., separately for contributions and for expenditures.

As explained in detail below, the Committee made \$400 in federal contributions and it made \$810.52 in federal expenditures. Therefore, the Committee did not reach the registration threshold as to either contributions or expenditures.

Contributions

As reflected in the Committee's campaign reports filed with the State of Michigan, the Committee paid for 8 tickets to a fund raising event for congressional candidate Dale Kildee, at \$50 apiece. The aggregate amount of contributions was \$400.

Expenditures

As alleged in the Complaint, the Committee expenditures consisted of payments for print advertisements in local newspapers. The advertisements supported both candidates for federal office and candidates for state and local office. The Committee's print ad expenses and the portion allocable to federal candidates is detailed below.

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- 1) ***Tuscola County Advertiser* (Complt. ¶ 7)** – The Committee placed three print messages in the *Tuscola County Advertiser*. The total expense was \$1830, which covered: (a) a half page ad in the October 29, 2008 edition of the newspaper (costing \$542); (b) a front page sticker in the November 1, 2008 edition of the paper (costing \$600); and (c) a full page ad in the November 3, 2008 “*Shoppers Advantage*” advertising insert (costing \$688). (Affidavit of Kathy Gierman attached hereto, ¶ 2 and Exh. A) The total amount of the Committee’s advertising in the *Tuscola County Advertiser* allocable to support of federal candidates was \$612.27, as explained below:

a) ***October 29 half page ad*** – (Gierman Affid. Exh. B) The ad is divided into two sections, a top portion with names and photographs of federal and non-federal candidates (comprising approximately 77% of the total ad space), and a bottom “tear off” “voting ticket guide” with the names of 74 federal and non-federal candidates (comprising the remaining 23% of the total ad space).¹ The \$542 cost of the ad is fairly divided into \$417.34 for the top portion ($\$542 \times 77\%$) and \$124.66 for the bottom portion ($\$542 \times 23\%$). The top portion displays the names and photographs of 10 candidates, of which 4 are federal candidates, resulting in a federal expenditure for the top portion of \$166.94 ($\$417.34 \times 40\%$). Of the 74 candidates listed on the bottom voter guide portion of the ad, the first 4 were federal candidates, resulting in a proportional federal expenditure for that portion of the ad in the amount of \$6.73 ($\$124.66 \times 5.4\%$). The total federal expenditure for this ad was \$173.67 ($\$166.94 + \6.73).

b) ***November 1 sticker*** – (Gierman Affid Exh. C) The ad consisted of a sticker on the front page of the November 1, 2008 *Tuscola County Advertiser*. (Gierman Affid. Exh. C). The sticker named 11 candidates, 4 of whom were candidates for federal office.² All candidates were given equal prominence. The allocable cost for the federal candidates was \$218.16 ($4/11 \times \600).

¹ The total area of the ad inside the border is 104 sq. in. The area of the top portion is approximately 81 sq. in. and the area of the bottom portion is approximately 23 sq. in. All of the other ads discussed below, while varying in total size, were equivalent in layout and retained the same proportions.

² The federal candidates were: Barack Obama, Joseph Biden, Carl Levin and Dale Kildee. The non-federal candidates were: Terry Brown (State Rep.), Diane Marie Hathaway (Michigan Supreme Court), Tim Adams (Sheriff), Pat Donovan-Gray (County Treas.), Larry Farnum (County Drain Commissioner), Tom Kern (County Commissioner) and Warren Taylor (County Commissioner).

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c) *November 3 "Shoppers Advantage" ad* – (Giernan Affid Exh. D) This full page ad is basically identical to the October 29 half page ad. The attributable federal portion is as follows: cost of the top portion = \$529.76 ($\$688 \times 77\%$), cost of bottom portion = \$158.24 ($\$688 \times 23\%$); federal candidate portion of top part of ad = \$211.90 ($\$529.76 \times 40\%$); federal candidate portion of bottom part of ad = \$8.54 ($\$158.24 \times 5.4\%$). The total federal expenditure for this ad was \$220.44.

- 2) *Cass City Chronicle* (Complt. ¶ 8) – The Committee purchased a half page ad in the October 29, 2008 *Cass City Chronicle* (Giernan Affid Exh. E) at a cost of \$261.23. The ad is identical to the ads in the *Tuscola County Advertiser* discussed above, other than that the two parts of the ad are side-by-side. The allocable federal portion is as follows: cost of the left side portion with photos = \$201.15 ($\$261.23 \times 77\%$), cost of right side portion = \$60.08 ($\$261.23 \times 23\%$). Federal candidate portion of left side part of ad = \$80.46 ($\$201.15 \times 40\%$); federal candidate portion of right side portion = \$3.24 ($\$60.08 \times 5.4\%$). The total federal expenditure for this ad was \$83.70 ($\$80.46 + \3.24).
- 3) *Vassar Pioneer Times* (Complt. ¶ 9) – This full page ad in the October 29, 2008 paper (Giernan Affid Exh. F) is identical to the ads discussed above. Using the above analysis, the total \$357.50 cost of the ad is allocable as follows: cost of the top portion with photos = \$275.27 ($\$357.50 \times 77\%$), cost of bottom "tear out" portion = \$82.22 ($\$357.50 \times 23\%$); federal candidate portion of top part of ad = \$110.11 ($\$275.27 \times 40\%$); federal candidate portion of bottom portion = \$4.44 ($\$82.22 \times 5.4\%$). The total federal expenditure for this ad was \$114.55 ($\$110.11 + \4.44).

The Committee's total federal expenditures for the ads were \$810.52.³

Conclusion

The Committee's total federal contributions and expenditures alleged in the Complaint, \$400 and \$810.52, respectively, were well below the federal committee registration threshold. The Committee did not violate the FECA by failing to register and report as a political committee.

As discussed above, the funds used for placement of the ads complied with FECA source restrictions. The Michigan Campaign Finance Act prohibits the Committee from using funds contributed by corporations, labor organizations, Indian tribes or persons making contributions in the name of another person. MCL §§ 169.254, 169.242, 169.244. Thus, the Committee used only

³ \$612.27 for *Tuscola County Advertiser* + \$83.70 for *Cass City Chronicle* + \$114.55 for *Vassar Pioneer Times*.

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Federal Election Commission
March 26, 2009
Page 5

federally permissible funds for the ads.

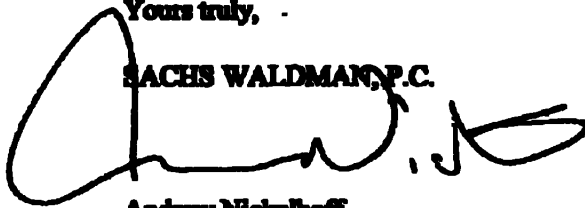
The Committee acknowledges that the disclaimers on the ads did not state that the ads were not authorized by a candidate or candidate committee. However, the disclaimers otherwise complied with all FECA requirements. The Committee also acknowledges that it did not file FBC Form 5 with respect to the federal expenditures.

Given the relatively insignificant scale of the Committee's oversight, the Committee urges the FEC to exercise its discretion not to proceed in this case. The Committee intends to scrupulously adhere to all FECA requirements in its future activities, including registration as a federal committee if called for. Should the FEC decide to pursue this matter, the Committee requests that the case be submitted for resolution through the ADR process.

Please contact me with any questions you may have.

Yours truly, -

SACHS WALDMAN, P.C.



Andrew Nickelhoff

cc: John Hunter, Chair
Kathy Gierman, Treasurer
C:\Gmail\Nickelhoff\Gmail\to\epmc\encl101.mxd

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CUSTOMER ACTIVITY REPORT

TUSCOLA COUNTY DEMOCRATIC COMMITTEE

03/18/09

Page 1

Customer #: 0210002000
Company name2:
Address: PO BOX 686
Caro MI 48723

Term: 90
Credit limit: 2500
Balance: 0.00
Customer type: co
Salesperson:
Last Call: / /
Next Call: / /

Phone:

A/R HISTORY: 01/01/08 - 03/18/09

Invoice #	Date	Type	Sort Line	Amount
On Acct	10/22/08	p	514	-1836.00
02702716001	10/23/08	i	7x12.25 T.C. DEMOCRATIC COMM.	542.00
02702716001	10/23/08	c	Moved From On Acct	-542.00
On Acct	10/23/08	c	Applied To 02702716 - 001	542.00
0111334 000	11/03/08	i	DEMOCRATIC FRONT PAGE STICKERS	608.00
02702783001	11/03/08	i	7x12.25 T.C. DEMOCRATIC PARTY	608.00
02702783001	11/03/08	c	Moved From On Acct	-608.00
On Acct	11/03/08	c	Applied To 02702783 - 001	608.00
				0.00

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CTIK

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

1. The first step is to identify the problem. This involves understanding the symptoms and the context in which they are occurring.

[illegible]

Thank you very much for your letter of 11/10/83. I am sorry that I cannot give you a more definite answer at this time. I am sure that you will understand my position. I am sure that you will understand my position. I am sure that you will understand my position.

**STRENGTHEN YOUR
MIND.**

THE
WOMAN • A

CORRECTION

The following information was received from the U.S. Department of Justice:

On May 10, 1968, the U.S. Attorney General advised that the FBI had received information that a person named [redacted] had been identified as a member of the Black Panther Party.

[The rest of the document is heavily redacted with large black boxes.]

THE

As a member of the National Student Reliance Fund, I would like to help in the fight against the rising cost of college education.

The first of these is the *Journal of the American Medical Association* (JAMA), which has been the most influential of the medical journals in the United States. It was founded in 1883 and has since then published a wide range of medical research, including clinical trials, laboratory studies, and reviews of the literature. The JAMA has been a leading voice in the medical profession, and its publications have been widely cited in the medical literature.

THE POWER WOMEN



The following is a list of the names of the persons who have been appointed to the various positions in the various departments of the Government of the State of New York, for the year 1900:

Chief Justice

What are your goals as a member of the Council? I am looking forward to working with the Council on a number of issues, including the environment, health care, and education. I am also looking forward to working with the Council on the issue of the economy.

1. The first of these is the fact that the
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ERLAND WUENEN • WOLFJOHN



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It's time to get serious about your business.

...I was engaged by students of the University of Chicago to study the history of the Negro in the United States. I have been honored to receive the degree of Doctor of Philosophy from the University of Chicago.

[illegible]

• VOLUNTARY WOMEN



THE NEW YORK TIMES

GEORGE A. ...

[illegible]

Students cast their ballots

Dr. Jerry Gorman
of **NEW YORK**

MILLINGTON — Students at Elk Elementary School gave Sen. Harold Olson a win at his poll Thursday. The National Student-Senator Meet. Election, sponsored in part by the National Parent Teacher Association, was for students in first through fourth grades. The results of the vote 263

Organized as Klan chapters, the Students Council, not least FGM leadership, the students and their beliefs after voting in May 1968, "something their parents will experience on Tuesday," I explained in 1968, "with the Klan's help, students would achieve."

See BALLOON AIR

THE VOLATILE VIOLETS

• 000710A • NEWTON ON NEWTONSOMER • 000710A • NEWTON ON NEWTONSOMER

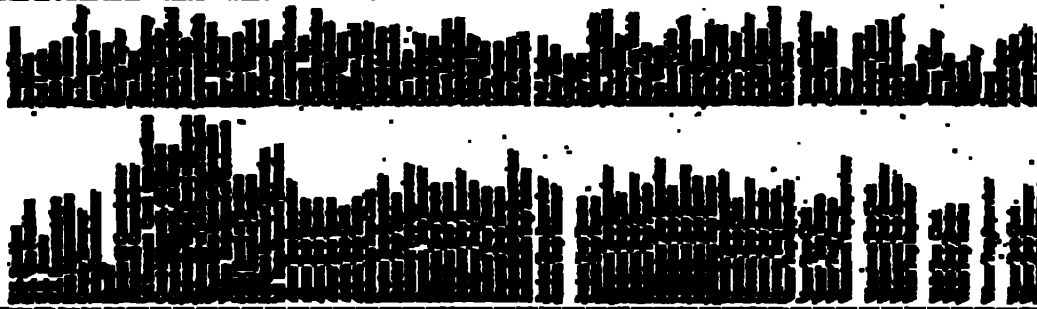
EXHIBIT
D

• VOTE JOBS • VOTE FOR WORKING MEN AND WOMEN •

• VOTE JOBS • VOTE FOR WORKING MEN AND WOMEN • VOTE JOBS

• VOTE JOBS • VOTE FOR WORKING MEN AND WOMEN • VOTE JOBS

• VOTE FOR WORKING MEN AND WOMEN • VOTE JOBS



Vote for the President
November 3, 1964
Vote for the President
November 3, 1964

Vote for the President
November 3, 1964
Vote for the President
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Vote for the President
November 3, 1964



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